

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



December 22, 2003

Reply to Attn of:

GG

TO: N/Deputy Associate Administrator for Education

FROM: GG/Acting Associate General Counsel (General)

SUBJECT: Authority for Purchasing Souvenirs

This is in response to your request for guidance on using appropriated funds to purchase items for distribution to non-NASA individuals at various NASA education and outreach events. This memorandum will also address which items, if any, are appropriate in specific factual situations.

In general, appropriated funds may not be used to purchase items for distribution as gifts or souvenirs to the public. 68 Comp. Gen. 226 (1989).¹ However, the agency may purchase such items if it has specific statutory authority to do so, or the expense is reasonably necessary or incident to carrying out an authorized function of the agency. Id.; see also B-247563.2 (May 12, 1993); B-247686 (Dec. 20, 1992).

Summary: This means that a number of the items distributed at NASA education and outreach events were appropriate, a number of the items were inappropriate, and the appropriateness of a number of items will depend upon the particular circumstances of the event. A fuller discussion of the outreach items follows.

Under the National Aeronautics and Space Act of 1958, as amended (the Space Act), NASA is statutorily required to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof." 42 U.S.C. 2473(a)(3). An agency has a legitimate interest in informing the public about its programs and activities. Just how far it can go depends on the nature of its statutory authority. NASA has wide statutory authority to disseminate information. Such authority will permit a broader range of activities and gives the agency discretion to choose the appropriate means, the selection being governed by the necessary expense doctrine. An expenditure, while not specifically authorized, may be permissible if it is "reasonably necessary or incident" to the proper execution of an authorized purpose or function of the agency. B-247563.3 (April 5, 1996).

¹ I was asked to address the issue of using appropriated funds to pay for souvenirs to be distributed to non-NASA individuals; the same rules would apply to distribution of gifts to employees.

The application of the "necessary expense" rule is a matter of agency discretion but it is not unfettered. B-257488 (Nov. 6, 1995). Under the "necessary expense" doctrine, an agency may purchase items in the nature of gifts or souvenirs if the objects are distributed for a legitimate purpose of the agency. B-247686 (Dec. 30, 1992). In many cases, the Comptroller General has found no direct relationship between the item and the agency's purported purpose. Whether particular items directly further an agency's mission depends largely on the facts and circumstance of the case. In each case, the Comptroller General seeks to balance its respect for agency discretion against the clear potential for abuse of taxpayers' dollars. See 1 GAO Principles of Federal Appropriations Law p. 4-128 (2nd ed. 1991). Therefore, in determining the propriety of a proposed expenditure, the "question is whether the expenditure falls within the agency's legitimate range of discretion or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range." B-223608 (Dec. 19, 1998).

The Comptroller General held that the Environmental Protection Agency (EPA) could procure for distribution magnets and buttons carrying messages about improving indoor air quality. The Comptroller General found that the items furthered the EPA's statutory function of increasing public awareness of environmental problems. B-247686 (Dec. 30, 1992). Similarly, the Comptroller General approved the use of appropriated funds by the Department of Veterans Affairs (VA) for the purchase and distribution of jar grips and matchbooks at a state fair. Both items were imprinted with the VA seal and the telephone number of the local medical center. These items furthered the VA's mission of informing veterans of the VA's services and recruiting new employees. B-247563.2 (May 12, 1993).

The Comptroller General has also held that an agency is not required to choose the least expensive means of accomplishing its objective. The distribution of wall calendars by an Army chaplain's office, which contained religious service information to military personnel and their families, was approved as a necessary and proper expense even though less expensive alternatives for distributing this information were available. B-211477 (July 14, 1983). In this case, the chaplains had a statutory duty to hold religious services and the publicizing of the schedule, the location, the chaplains' names and telephone numbers was an appropriate extension of the duty. The Comptroller General recognized that the Army could have disseminated information by less costly or existing methods such as newspapers or newsletters, but found that, in the absence of any prohibition to the contrary, the Army's justification was appropriate.

The Comptroller General has held that the necessary expense doctrine may justify distribution of informational items to employees as well. In approving the Food and Drug Administration's procurement and distribution of buttons (they cost \$150) to its employees with the message, "No Red Tape," the Comptroller General stated that the message was informational, promoted an internal management objective, and reminded agency employees of institutional objectives and goals. B-257488 (Nov. 6, 1995). The button serves much the same purpose as other internal agency informational media such as posters, memos, etc., and had no intrinsic value to its recipients. Id.

Use of items to recruit:

The Comptroller General approved the Army's use of funds to pay for framed recruiting posters to be given out as prizes to potential recruits. The Comptroller General found that giving out the posters fulfilled the agency's recruiting and advertising mission, noting the Army's statutory authority to conduct intensive recruiting campaigns. In contrast, in another case involving the VA, the Comptroller General found the appropriation was not available to purchase holiday rope pens, folding scissors, and shoelaces imprinted with the medical center's logo or slogan for potential nurse recruits. The Comptroller General found that the record contained no suggestion that the shoelaces, pens, or scissors distributed to potential employees served as anything other than favorable reminders of the VA. Unlike the posters at issue in the Army case, these items did not facilitate the VA's acquisition of information necessary to its recruiting efforts. Nor did these items provide recipients with essential information about the VA or the medical center not commonly available. B-247563.3 (April 5, 1996). Similarly, the Comptroller General rejected that Department of Energy's use of appropriated funds to give out baseball caps imprinted with the words "DOE-Valuing Diversity" to non-employees. B-260260 (Dec. 28, 1995). The Comptroller General disputed the agency's purported purpose that the caps assisted in recruiting a diverse workforce.

Clothing and other apparel:

Comptroller General decisions have consistently rejected an agency's use of appropriated funds to pay for shirts, hats, and other apparel. These decisions have held that shirts and hats are personal expenses and that "every employee of the Government is required to present himself for duty properly attired according to the requirements of his position." 63 Comp. Gen. 245 (1984). While it is strongly recommended not to use appropriated funds to pay for clothing for NASA employees or non-NASA employees, it is possible that a particular fact situation might arise where such a use might be permissible. For example, if t-shirts were the means of information dissemination and contained specific factual information not widely available to the public like a telephone number or website. In those situations, the t-shirts and hats would need to be relatively inexpensive. An expensive shirt with a small website logo would not pass this test. It is never permissible to use appropriated funds to pay for apparel to ensure that employees or individuals are "color coordinated" at events.²

Application of case law to Office of Education:

The Office of Education's mission is to "inspire the next generation of explorers" by engaging students in pursuing careers in the fields of science, technology, engineering, and mathematics and, furthermore, to generate "public interest in NASA's programs and activities." Effective public outreach and engagement is one of the primary objectives of the Office of Education.³ As a result of these goals, the Office of Education participates in numerous conferences and outreach events. In view of the fact that NASA has a long history of distributing souvenirs at events, I do not recommend a complete ban on these activities. However, I do have a few

² In those situations, employees can purchase their own apparel.

³ NASA 2003 Strategic Plan Goals 6 and 7.

general principles that should ensure that the Education Enterprise's distribution of souvenirs is consistent with the Agency's mission.

- (1) Items should be of nominal value;
- (2) Clothing and other apparel should rarely be purchased with appropriated funds;
- (3) Items should not be distributed solely to generate good will or support for NASA programs;
- (4) Items should be used to disseminate information not widely available (including telephone numbers and website addresses);
- (5) Make sure there is a strong connection between your audience and the intended item for distribution;
- (6) While the Agency is not required to use the least costly method of information dissemination, where there is no justification for more costly alternative, the least costly method should be preferred.

Review of NPRS Outreach Items List:

You also asked me to review the NPRS Outreach Items List and determine which items are appropriate for distribution. The key test is whether without the distribution of the item in question, NASA would be able to reach its intended audience and disseminate its information. B-191155 (March 29, 1998) (finding difficulty distinguishing cases involving novelty garbage cans, decorative ashtrays, cufflinks, and key chains). While an item may be appropriate in one particular factual situation it may be totally inappropriate in another. However, for the purpose of bringing some clarity to this process, I have identified a number of items that would be appropriate to be distributed to non-NASA individuals at educational outreach, NASA Awareness Days, and conferences for the sole purpose of furthering NASA's information dissemination mission. I have also identified a number of items that are not appropriate to general distribution to the public because they are not of nominal value.⁴

Appropriate items:

Lapel pins
 Logo decals
 Pens, pencils (excluding astronaut pen)
 Triangle Tri-Color Highlighter (no unit price provided)
 Four color boxed crayons (used in conjunction with educational activity with children)
 Plastic Bags with NASA logo
 Mouse pads
 Booklets/pamphlets/posters/bookmarks

Inappropriate items (Items are inappropriate because there is a less costly method of information dissemination – see above):

Plaques
 Gold Executive clock

⁴ It is appropriate in certain circumstances to present speakers with gifts. The Agency has authority through the Administrator's fund to purchase presentation items for distribution incident to an authorized function for non-government individuals.

Astronaut pen (costly and no more information disseminated than less expensive pens)
Calculator (no unit price provided)
Space Shuttle stress toy (no dissemination of information)

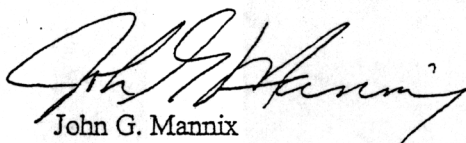
Questionable items (Depends on cost, purpose, and type of information provided):

Coin pouch and credit card holder (personal items)
Canvas bag
Tote bags
Polyester brief bag
Coasters
Coffee mugs, cups
Night light

Conclusion:

The Agency has the authority to use appropriated funds to purchase nominal items for distribution to the public but such authority depends on the intended purpose of the item. Pursuant to the Space Act authority requiring dissemination of information about NASA's activities, together with the "necessary expense doctrine," NASA may distribute materials/objects to the public, which contain information about NASA's activities. These items should not be distributed to employees. Doing so would defeat the Agency's information dissemination and outreach mission. While this memorandum addresses souvenirs as it relates to activities under the auspices of the Office of Education, it is also expected that the other Enterprises will be complying with this policy.

If you need further assistance, please call Shari Feinberg of my staff at 358-2069.



John G. Mannix